IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12-3-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.25911 of 2006
(OA No.6610/1995)

K.Damodaran .. Petitioner

Vs.

1. The Director General of Police,
   Madras-4.

2. The Superintendent of Police,
   'Q' Branch C.I.D., Madras-4.

3. The Accountant General (Accounts
   and Entitlements), Madras-18. .. Respondents

O.A.No.6610 of 1995 filed before the Tamil Nadu Administrative Tribunal, Madras under Section 19 of Administrative Tribunals Act, subsequently on the abolition of the Tribunal, transferred to the file of this Court in the above writ petition, praying to quash the order of the second respondent in G1/Pen.15/93 dated 20.10.1994,and to direct the respondent to refund the amounts recovered from the petitioner's retirement benefits and pay all the arrears due to the petitioner.

For Petitioners : Mr.P.Rajendran

For Respondents : Mr.C.Kalai Chelvan,
Addl.Govt.Pleader.

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O R D E R

The petitioner has filed O.A.No.6610 of 1995 before the Tamilnadu Administrative Tribunal, Chennai seeking to quash the order of the second respondent in G1/Pen.15/93 dated 20.10.1994 and refund the amounts recovered from the petitioner's retirement benefits and pay all the arrears due to the petitioner. The said O.A. has been transferred to this Court and renumbered as W.P.No.25911 of 2006.

2. The case of the petitioner as put forth by him before

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the Tribunal was that initially he was appointed as a Police Constable on 30.4.1954. Later, he was promoted as Head Constable on 19.6.1976. He has completed ten years in the post of Head Constable on 19.6.1986. On completion of ten years in the said post, the petitioner along with similarly placed persons made representations praying for grant of selection grade. Thereafter, the Superintendent of Police, 'Q' Branch C.I.D., Madras-4 passed orders creating 11 posts of Head Constable (Selection Grade) and directing the movement of 11 Head Constables, including the petitioner to the Selection Grade. Later, by letter dated 27.8.1991 the petitioner was allowed to move to the Selection Grade with effect from 19.6.1986 and consequential pay and allowances were also allowed to the petitioner. When the pay scale was revised, the petitioner's pay was also fixed in the revised Selection Grade scale with effect from 1.6.1988. The petitioner retired from service on 30.6.1993.

3. The further case of the petitioner was that after retirement, he has received all the retirement benefits due to him, except the commuted value of pension which was not paid to him. Hence, he has made a representation to the authorities concerned for payment of the aforesaid amount. However, by an order dated 8.8.1994, the second respondent directed recovery of a sum of Rs.11,428/- from the petitioner by reducing his pension at the rate of Rs.55/- per month. It was followed by another communication from the second respondent dated 20.10.1994. The said order is under challenge in this Writ Petition.

4. Mr.P.Rajendran, the learned counsel for the petitioner contended that prior to the order of recovery, no notice has been issued to the petitioner calling upon him to explain why such recovery should not be made. Thus, according to the learned counsel, failure to do so is violative of the principles of natural justice. The learned counsel further submitted that as per Rule 71(3) of the Tamilnadu Pension Rules, 1978, the claim has to be made by the Government within 12 months from the date of the retirement of the Government servant. In the case on hand, the petitioner retired on 30.6.1993 and the recovery is sought to be made by the proceedings of the second respondent dated 8.8.1994, followed by another communication dated 20.11.1994. Thus, according to the learned counsel, recovery cannot be made in view of the prohibition contained in Rule 71(3)(a) of the Tamilnadu Pension Rules, 1978.

5. The learned counsel further submitted that even as per the reply affidavit filed by the respondents wherein they have admitted that the Government in G.O.Ms.No.1050 Finance (P.C.) Department dated 5.10.1978 introduced selection grade for the post of Head Constable with effect from 1.10.1978. Hence, according to the learned counsel, the plea that has been taken by the respondents that there was no scheme of selection grade in existence then cannot be accepted.

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6. The learned Additional Government Pleader appearing for the respondents is unable to say that the petitioner is not entitle for the relief which he has claimed in the writ petition. The learned Additional Government Pleader could not point out that prior to the order of recovery, a show cause notice has been issued to the petitioner. Further, the learned Additional Government Pleader fairly submitted that Rule 71(3)(a) of the Tamilnadu Pension Rules 1978 clearly says that no claim could be made by the Government after 12 months from the date of retirement of the Government servant. Further, the learned Additional Government Pleader fairly submitted that in the reply affidavit, it has been stated that the selection grade for the post of Head Constable was given with effect from 1.10.1978.

7. I have heard Mr.P.Rajendran, the learned counsel appearing for the petitioner and Mr.C.Kalai Chelvan, the learned Additional Government Pleader appearing for the respondents.

8. In the O.A., the petitioner has specifically taken a ground that notice calling upon the petitioner to show cause against the recovery was not issued before passing the impugned order. When such a plea has been taken by the petitioner in the said O.A., it is for the respondents to say that the show cause notice has been issued to the petitioner before passing the order of recovery. But, unfortunately, in the reply affidavit, it has not been pointed out that such notice has been issued to the petitioner calling upon the petitioner to show cause against the recovery before passing the impugned order. The learned Additional Government Pleader states that there is no need to issue show cause notice. But, I am unable to accept the said submission of the learned Additional Government Pleader. Hence, I am constrained to hold that the impugned order has been passed by the second respondent without issuing show cause notice to the petitioner and without calling explanation from the petitioner. On this ground alone, this writ petition is liable to be allowed.

9. The second submission that has been made by the learned counsel for the petitioner is that Rule 71(3)(a) of the Tamilnadu Pension Rules 1978 contemplates that any order of recovery has to be made within 12 months from the date of retirement of a Government servant. Rule 71(3)(a) of the Tamilnadu Pension Rules 1978 reads as follows:-

> "Efforts shall be made to assess and adjust the recoverable Government dues within a period not exceeding twelve months from the date of retirement of the Government servant and if no claim is made on Government account against the Government servant within such a period, it shall be presumed that no Government claim is outstanding against him."

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10. In the case on hand, admittedly, the petitioner retired from service on 30.6.1993 and the impugned order of the second respondent for recovery has been made on 8.8.1994, followed by another communication dated 20.10.1994. Thus, it could be seen that the order of recovery has been made after 12 months from the date of retirement of the petitioner, which is prohibited under Rule 71(3)(a) of the Tamilnadu Pension Rules. Hence, on this ground also, the petitioner is liable to succeed in this Writ Petition.

11. The next point that the learned counsel for the petitioner urged is that in view of the definite stand taken by the second respondent in the reply affidavit that the Government in G.O.Ms.No.1050 Finance (PC) Department dated 5.10.1978 introduced selection grade for the post of Head Constable with effect from 1.10.1978 in the time scale of pay of Rs.400-15-490-20-650-25-700, the respondents cannot be heard to say that there is no scheme of selection grade in existence then and hence, there is no need to move to selection grade of Head Constable. According to the learned counsel for the petitioner, since it has been admitted by the second respondent in the reply affidavit as stated supra, they cannot be heard to say that there is no scheme of selection grade at all. The learned Additional Government Pleader is not in a position to dispute the said position.

12. Further, even assuming that the respondents have wrongly paid the amount to the petitioner on the assumption that he was entitled to selection grade in the post of Head Constable, the same cannot be recovered after the petitioner retired from service. It is not the fault of the petitioner for payment of such amount to him. It is entirely the fault of the respondents, if at all, they have paid any excessive amount.

13. Hence, for the reasons stated above, the impugned orders of the second respondent dated 8.8.1994 and 20.10.1994 are liable to be set aside and accordingly, the same are set aside. The respondents 1 and 2 are directed to refund the amount recovered from the petitioner's retirement benefits and pay all the arrears as expeditiously as possible, preferably within three months from the date of receipt of this order. The respondents are directed to restore the pension of the petitioner without any reduction whatsoever. The Writ Petition is allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Director General of Police,
   Madras-4.

2. The Superintendent of Police,
   'Q' Branch C.I.D., Madras-4.

3. The Accountant General (Accounts
   and Entitlements), Madras-18.

+1cc to Mr.P.Rajendran, Advocate Sr 15191
+1cc to Govt. Pleader Sr 15590

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km/2.4.

W.P.No.25911 of 2006

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